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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/027,439	02/20/1998	FRANKLIN H. PORTUGAL	044198.0000	3103
7590	07/08/2004		EXAMINER	
MILLEN,WHITE,ZELANO & BRANIGAN, P.C. 2200 Clarendon Blvd, Suite 1400 Arlington, VA 22201			SITTON, JEHANNE SOUAYA	
			ART UNIT	PAPER NUMBER
			1634	

DATE MAILED: 07/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.



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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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EXAMINER

ART UNIT PAPER

6

DATE MAILED:

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Commissioner for Patents

Attached is a communication from the examiner and an Interview Summary (PTOL-413B).

Communication

The Reply Brief filed June 16, 2004 has been entered and considered. It is noted that the status of the claims reflected in the appendix of the Reply brief is incorrect because the claims in the appendix reflect a first “proposed amendment after final rejection” (submitted 11/3/2003) wherein the amendments to the claims were not entered as indicated by a first advisory action (mailed 12/24/2003). The Reply brief (page 1) also indicates that the advisory action (second advisory action mailed 4/16/2004) accompanying the examiner’s answer, stated that the amendments after final will be entered and that therefore a new appendix was provided reflecting the amendments to the claims. *However*, this appendix reflects an incorrect status of the claims. The second advisory action mailed 4/16/2004 did not state that the proposed amendment filed 11/3/2003 would be entered, but rather was an advisory action for the reply filed 2/2/2004 which contained the “second proposed amendment after final rejection” (see first line of second advisory action mailed 4/16/2004). The Reply brief is further inconsistent with the Substitute brief on appeal, as the Reply brief references an issue 8 from the Substitute brief on appeal, however the Substitute brief contained no issue 8. Therefore, while the Reply brief has been entered and considered, this action should not be construed as “entering” the claims in the appendix. The appendix is not considered an amendment to the claims. The correct status of the claims on appeal are reflected in the Substitute brief filed 2/2/2004. The correct status of the issues on appeal are and the grounds of rejection are set forth in the examiner’s answer mailed 4/16/2004.

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The following reflects the order of events in the instant application, after prosecution was closed:

1) 11/3/2003: applicants filed a) a first proposed amendment after final rejection, amending claims 47, 48, and 52-58, and b) an appeal brief.

2) 12/24/2003: The proposed amendment of 11/3/2003 was not entered as indicated in a first advisory action mailed 12/24/2003, noting that the proposed claim amendments would require further search and consideration. The appeal brief was found defective and a Notification of Non-Compliance with 37 CFR 1.192 (c) accompanied the first advisory action.

3) 2/2/2004: applicants filed a) a second proposed amendment after final rejection, canceling claim 54, and b) a substitute appeal brief.

4) 4/16/2004: The 2/2/2004 proposed amendment was entered as indicated in a second advisory action mailed 4/16/2004. The status of the claims was reflected at section 7 of the second advisory action, which did not include claim 54 because it had been canceled. The second advisory action referenced the reply filed 2/2/2004, and indicated that the cancellation of claim 54 had overcome a rejection under 35 USC 102(b). The second advisory action was accompanied by an examiner's answer mailed 4/16/2004.

- The examiner's answer stated at page 1 that the answer was in reply to the Substitute appeal brief filed 2/2/2004.

Jehanne Sitton
JEHANNE SITTON
PRIMARY EXAMINER

7/6/2004

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- At page 2, section 3, of the examiner's answer affirms that the status of the claims in the [Substitute] brief is correct.
- *The status of the claims in the Substitute brief (2/2/2004, which is correct) is not the same as the status of the claims in the Reply brief (6/16/2004).
- At page 2, section 4, the examiner's answer affirms that the appellant's statement of the status of the Amendments after Final Rejection contained in the [substitute] brief is correct (Substitute brief page 2, section IV states: "An amendment after final was submitted on November 3, 2003, but not entered. An Amendment After Final canceling claim 54 has been filed simultaneously with this Brief.").
 - At page 3, section 8, the answer affirms that the copy of the appealed claims contained in the Appendix to the [Substitute] brief is correct.

**However, the claims in the appendix to the Substitute brief (claims from the second proposed amendment after final which were entered) does not match the claims in the appendix to the Reply brief.*

3) On 6/16/2004, applicants filed a Reply brief. The status of the claims in the appendix of the Reply brief reflects the first proposed amendment after final rejection (11/3/2003) which was noted as not entered in the first advisory action and is therefore incorrect. The correct status of the claims on appeal was indicated in the examiner's answer mailed 4/16/2004, at page 2.

The application has been forwarded to the Board of Patent Appeals and Interferences for decision on the appeal.